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FM AMCONSUL HO CHI MINH CITY
TO RUEHC/SECSTATE WASHDC 2151
INFO RUEHHI/AMEMBASSY HANOI 1543
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHINGTON DC
RUEHRC/DEPT OF AGRICULTURE WASHINGTON DC
RUEHBK/AMEMBASSY BANGKOK 0220
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UNCLAS SECTION 01 OF 02 HO CHI MINH CITY 000178

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E.O. 12958: N/A

TAGS: ETRD ECON WTRO KIPR VM

SUBJECT: USTR DISCUSSES WTO MEMBERSHIP, IT AND IPR WITH HCMC BUSINESS COMMUNITY

REF: HANOI 233 B) HANOI 310

¶1. (SBU) Summary: Area businesspeople discussed new trading rules and changes to Vietnam's legal framework as a result of its WTO membership with representatives of the Office of the U.S. Trade Representative (USTR) and the U.S. Department of Commerce, during a February 5-6 visit to Ho Chi Minh City. The USG visitors provided American Chamber of Commerce members with an overview of the U.S. - Vietnam bilateral trade relations following Vietnam's accession to the World Trade Organization in January of this year, and the U.S. proposal to Vietnam to negotiate a Trade and Investment Framework Agreement. USTR also explained many of the important commitments Vietnam has undertaken as part of its WTO accession agreement including comprehensive tariff reductions, significant service sector liberalization and adoption of WTO consistent rules in areas such as trading rights, IPR, and transparency. In turn, AmCham members outlined their plans to form a WTO implementation committee to monitor implementation, and asked a broad range of questions relating to specific service sector commitments, trading rights, and customs duties. In separate meetings representatives of U.S. information technology (IT) companies registered concern about new regulations that they believe could make it difficult for U.S. companies to qualify for Vietnamese government IT contracts. Legal experts outlined challenges to adequately protecting intellectual property rights (IPR) under Vietnam's new IPR law. The visit followed meetings on February 1-2 in Hanoi and HCMC by Assistant United States Trade Representative Barbara Weisel. In those meetings USTR proposed to the GVN to move our bilateral relationship forward along the path set out under the Enterprise for ASEAN Initiative by negotiating a Trade and Investment Framework Agreement (TIFA) (ref A). End summary.

AMCHAM

¶2. (SBU) David Bisbee, Director for Southeast Asia and Pacific Affairs for USTR, and Elena Mikalis, Director for ASEAN Affairs for the International Trade Administration at the Department of Commerce, visited HCMC February 5-6 to

discuss Vietnam's WTO obligations and its legal reform efforts with members of the U.S. business community here. In a lengthy session with the American Chamber of Commerce, USTR fielded questions and provided additional details and clarifications on the terms and coverage of Vietnam's WTO accession package. AmCham members admitted that more study of the agreement was needed by members and that to better monitor and track implementation of the commitments by Vietnam, AmCham was considering forming a WTO

Implementation Committee. Bisbee encouraged the formation of such a group and suggested that AmCham propose a formal dialogue with the Ministry of Trade as part of the process to facilitate a better understanding of the many legal and regulatory developments underway to meet WTO commitments.

¶13. (SBU) The meeting also included lengthy discussions over trading rights and distribution services. Members asked for clarification of Vietnam's commitments, which include the ability for all Vietnamese and foreign companies and individuals to directly import most goods into Vietnam as of January 1, 2007. Vietnam's commitments also provide for foreign individuals and enterprises without a physical presence in Vietnam to act as an importer of record, an important provision for many U.S. exporters. Foreign firms can engage in distribution services of most goods without going through a Vietnamese intermediary in 2009. In the WTO accession agreement, Vietnam improved upon the timetable for granting trading rights established in the U.S.-Vietnam Bilateral Trade Agreement (BTA) to meet its GATT obligations, and reduced the range of products subject to transition periods. For distribution services, Vietnam also reduced the list of products excluded in Vietnam's WTO commitments compared to the BTA.

IT

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¶15. (SBU) Representatives of U.S. IT companies met with Bisbee and Mikalis to voice their concerns about an IT procurement policy announced by Vietnam in late July 2006 (Decision 169). USTR and Embassy Hanoi have worked closely with the Ministry of Post and Telecommunication (MPT) since July to raise USG and industry concerns about the policy, which seeks to provide procurement preferences for localized IT products and open source software. MPT released a draft implementing circular on January 30 for industry comments, and USTR urged the IT industry members to raise their concerns directly with MPT. In response to concerns raised by the USG in July, the MPT has worked to revise the original Decision to limit coverage to only government agencies and explicitly exclude state owned enterprises. USTR and Hanoi Econoff explained to the industry representatives that MPT was open to hearing from industry about global procurement best practices, and industry was urged to engage the GVN directly on this issue. (Note: In meetings in Hanoi, USTR raised industry concerns with MPT directly. (Ref B) End note.)

IPR

¶16. (SBU) Bisbee and Mikalis also met with lawyers and HCMC government officials to discuss the implementation of Vietnam's new IPR law, which came into effect in 2006. An attorney at a foreign law firm reported that in her opinion Vietnam's IPR enforcement activities had slowed as authorities familiarized themselves with the new law and its regulations. The attorney and a representative from HCMC's Department of Science and Technology (DOST) observed that new rules meant to preserve the impartiality of IPR enforcement activities (by clearly separating registration and enforcement activities) have, in the short term, reduced the ability of experts at DOST and other agencies to assist enforcement authorities in pursuing IPR

violations. During a discussion on USTR's Special 301 review of IP protection among major trading partners, DOST requested USTR's assistance in establishing a dialogue mechanism specific to HCMC's local efforts, similar to the 301 review but on a semi-annual basis. DOST explained that provincial level implementation could be supported by regular dialogue with USTR and other USG agencies on the problems and bottlenecks experienced by the private sector. DOST also acknowledged the valuable technical assistance received from the U.S. Patent and Trademark Office (USPTO) and the USAID-funded Support for Trade Acceleration (STAR) program and reiterated the common request among Vietnam's IP agencies for increased levels of technical assistance.

¶7. (SBU) The private sector attorney also explained her understanding that in order for IPR rights-holders to pursue those who sell counterfeit goods or goods that violate trademarks, rights-holders must first send "cease and desist letters" to violators. While these letters are meant to be used as evidence that violations have taken place, they often tip off infringers, who are then able to evade prosecution. In subsequent meetings in Hanoi with IP authorities and advisors to the STAR program, it was clarified that the relevant decree requires 'cease and desist' letters only in cases of unfair competition, not in cases of clear trademark infringement.

¶8. (U) Mr. Bisbee and Ms. Mikalis cleared this cable.
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